CAYMAN CORPORATION and SHENANDOAH OIL CORPORATION

IBLA 71-282 Decided November 30, 1972

Appeal from decisions by New Mexico State Office, Bureau of Land Management, holding oil and gas leases NM 0254311-B (Okla.) and NM 0254366 (Okla.) to have terminated for failure to pay rentals.

Affirmed.

Oil and Gas Leases: Rentals--Oil and Gas Leases: Termination

> Oil and gas leases automatically terminate under the Act of July 29, 1954, 68 Stat. 585, 30 U.S.C. § 188(b) (1970) where lessees fail to pay rental on or before the anniversary date of their leases, and the Secretary is without authority to grant relief from the provisions of the statute where lessees have not made the rental payments.

APPEARANCES: John A. Croom, Esq., of Oklahoma City, Oklahoma, for appellants.

OPINION BY MR. FISHMAN

The Cayman Corporation and the Shenandoah Oil Corporation have appealed to the Secretary of the Interior from decisions by the Santa Fe State Office, Bureau of Land Management, both dated April 23, 1971, which declared appellants' oil and gas leases, NM 0254311-B (Okla.) and NM 0254366 (Okla.) to have terminated.

The leases in issue were subject to the provisons of the Act of July 29, 1954, 68 Stat. 585, 30 U.S.C. § 188(b) (1970) which provides in pertinent part:

> . . . upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil and gas in paying quantities, the lease shall automatically terminate by operation of law . . .

The leases were issued effective as of June 1, 1962, and the anniversary date for their eighth year was June 1, 1970. The annual

rental payments for the leases were never received by the New Mexico State Office either on or before June 1, 1970, or at anytime thereafter.

The Geological Survey issued a report stating that the leases in question had not attained minimum royalty status prior to the anniversary date of June 1, 1970, for the reasons that there had been no discovery on the leaseholds, and also that the leases had not been communitized with lands on which a discovery had been made.

Appellants do not attack the report of the Geological Survey; nor do appellants assert that there are any wells on their leaseholds capable of producing oil or gas in paying quantities. Instead, appellants request that the Secretary enter an order to waive the requirement for the payment of rentals, and approve a commutization agreement in connection with the leases.

Appellants advert to 30 U.S.C. § 226(j) (1970) which in applicable portion provides that:

> For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, or any part thereof (whether or not any part of said oil or gas pool, field, or like area, is then subject to any cooperative or unit plan of development or operation), lessees thereof and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest. The Secretary is thereunto authorized, in his discretion, with the consent of the holders of leases involved, to establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirement of such leases and to make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan as he may deem necessary or proper to secure the proper protection of the public interest. The Secretary may provide that oil and gas leases hereafter issued under this chapter shall contain a provision requiring the lessee to operate under such a reasonable cooperative or unit plan, and he may prescribe such a plan under which such lessee shall operate, which shall adequately protect the rights of all parties in interest, including the United States. [Emphasis supplied].

Appellants rely on the emphasized language and suggest that it is a sufficient predicate for relief in this case. However, the authority granted thereby does not extend to terminated leases.

There is no statutory authority to grant the relief requested by appellants. In Robert P. Good, 6 IBLA 233 (1972), a case involving the same issue presented in the case at bar, the Department stated:

> By the act of July 29, 1954, 68 Stat. 585, 30 U.S.C. § 188(b) (1970), an oil and gas lease upon which there is no well capable of producing oil or gas in paying quantities, automatically terminates upon failure of a lessee to pay rental on or before the anniversary date of the lease. Consistent rulings of this Department have held that a lease terminates in those circumstances and this Department has no authority to reinstate such terminated leases administratively in the absence of applicable statutory authority. (citing cases).

The Act of July 29, 1954 was amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(b) (1970) to provide curative relief or reinstatment of terminated leases under certain circumstances. See e.g. Rijan Oil Company, Inc., 78 I.D. 359 (1971); C.E. Knowles, et al., 3 IBLA 307 (1971). However, the record discloses no basis for invoking the relief provisions of the Act of May 12, 1970, in the case at bar. Appellants have not paid the rentals, and their leases terminated automatically under 30 U.S.C. § 188(b) (1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Frederick Fishman, Member

We concur:

_____
Martin Ritvo, Member

I concur both in the primary opinion by Member Fishman and in the special concurring opinion by Member Ritvo

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Edward W. Stuebing, Member

MR. RITVO CONCURRING SPECIALLY

While I agree with the result reached in the major opinion, I feel that it fails to state the facts fully and disposes only partially of appellant's contentions. Therefore, in order that the appeal may be more fully understood and serve as a guide in other similar cases, I append this separate concurrence.

Cayman Corporation and Shenandoah Oil Corporation are lessees of oil and gas leases NM 0254311-B (Okla) and NM 0254366 (Okla). Lease NM 0254311-B covers 80 acres, described as W 1/2 NW 1/4, sec. 20, T. 23 N., R. 16 W., Ind. Mer., Meyer County, Oklahoma, while lease NM 0254366 covers 160 acres described as the S 1/2 NW 1/4, N 1/2 SW 1/4 sec. 21, same township and range. Each lease had an expiration date of May 31, 1972. In a decision dated April 28, 1970, the New Mexico State Office notified the lessees that, all or part of the lands in each lease having been found to be within the known geologic structure of the addition to the Northwest Cedardale Field, the rental was increased to $2 per acre and a $1,000 bond was required.

On April 30, 1970, Cayman Corporation wrote the State Office as follows:

* * *

> Please be advised that NM-0254311-B (Okla) is in a unit covering section 20-23N-16W, Cayman #1 Meek, which is presently a shut in Mississippi well, completed on March 9, 1970.
>
> NM-0254366 (Okla) is included in a unit, Cayman #1, Allen, presently drilling at 6885' this date.
>
> Please let us know if we can provide additional information.

The State Office, in a letter signed by Fred E. Padilla, Chief Branch of Oil and Gas, replied on May 6, 1970, that a bond was required and that rental at the rate of $2.00 per acre was due beginning June 1, 1970.

On May 13, Cayman Corporation sent the State Office a copy of a memorandum to one of its employees which stated in part:

> * * * Subsequent to receiving [State Office] letter [of May 6, 1970] we called Mr. Padilla, and he said although no rental would be due since leases are held, bonds were due within 30 days of May 6th.

On May 19, 1970, the Oil and Gas Supervisor, Mid-Continent Region, Tulsa, Oklahoma, wrote Shenandoah that it had received information of the completion of the No. 1 Meek in the Meramec formation and instructed Shenandoah as lessee of NM 0254311-B to submit for approval as to form prior to approval two copies of a draft of a communitization agreement covering the Meramec gas from section 20 so that the lease would share in production from the well.

On June 9, 1970, Cayment delivered to the Mid-Continent Region Office, unexecuted drafts of communitization agreements covering sections 20 and 21. On June 10, 1970, it submitted to the same office copies of the Designations of Units it had filed of record in Major County, Oklahoma.

On June 10, 1970, the lessees filed a bond for each lease, but they did not pay the rental.

In a memorandum, dated June 16, 1970, to the New Mexico State Office, the Oil and Gas Supervisor, Mid-Continent Region, reviewed the facts as to the leases. He pointed out that an order dated April 3, 1970, of the Oklahoma Corporation Commission established 640-acre drilling and spacing units for the production of oil and gas condensate underlying sections 20 and 21-23 N-16W. The order, it noted, communitized all privately owned royalty interests. The memorandum stated that the lessees had filed with the Mid-Continent Region Office copies of Designations of Unit previously recorded in Major County and communization agreements covering sections 20 and 21. It concluded, however, that neither of the leases attained minimum royalty status prior to the lease anniversary date of June 1, 1970, because there had been no discovery on the leasehold nor had the leases been communitized with a lease on which discovery had been made.

On March 29, 1971, the Oil and Gas Supervisor wrote to the State Office that a completed oil and gas well is located in each of sections 20 and 21 and that the lands formerly covered by appellant's leases should be offered for competitive oil and gas leasing. He pointed out that his office had received on July 6, 1972, a list from the State Office which showed both leases had expired as of June 1, 1970, for nonpayment of rentals.

On April 23, 1971, the State Office issued its decision holding that the lease had terminated for failure to pay rental on or before the anniversary date.

In their appeal, appellants recite the facts, adding that production was also obtained upon the Cayman Corporation Allen Unit in

section 21 prior to June 1, 1970. They state that Cayman Corporation office in Oklahoma City was new and the personnel inexperienced, that voluntary declarations of unitization had been filed and recorded in Major Country, prior to June 1, 1970, and that the rentals had inadvertently not been paid, under the assumption that leases were held by production from Meek Unit Well No. 1 and Allen Unit Well No. 1. They stress that the wells are marginal producers with a life of 6 months (as of May 1971) and that no reasonably prudent operator would purchase the leases in view of the proportionate share of the expense he would have to bear for drilling and equipping the well in relation to the share of production attributable to the federal lands involved. It argues that since it cannot force pool the United States interest and since the United States most likely will not be able to sell leases, the public interest is not being protected.

In their opinion, it continues, the statutes of the United States do not cover this pecular situation where production from the unit well is marginal and will not extend over six months before being depleted, and that it is within the discretion of the of the Secretary to grant relief in a special situation not specifically provided for. It cites 30 U.S.C. § 226(j)(1970) as giving the Secretary the necessary power. That section provides:

> * * * The Secretary is "authorized, in his discretion with the consent of the holders of the leases involved, to establish, alter change or revoke drilling, producing, rental, minimum royalty, and royalty requirements of such leases, in connection with the institution and operation of any such cooperative or unit plans as he may deem necessary or proper to secure the protection of the public interest. (Emphasis added).

It then suggests that to protect the public interest of getting the greatest recovery from the federal lands involved the Secretary should waive the rentals beginning June 1, 1970, with the provision that the leases be communitized immediately, and that the proceeds of the sale of production then attributable to federal lands located in the Meek and Allen Unit be immediately paid to the United States. It concludes that the notice of appeal is filed to protect the public interest in the only appropriate manner.

The major opinion rules, correctly, that the leases terminated upon failure to pay the rental on the anniversary date and that there is no statutory authority to grant the relief requested.

If appellant's analysis of the situation is accurate, and it seems to be, the public interest has indeed suffered by the termination

of the leases and the failure to offer the lands for lease again, this time by competitive sale. The remedy offered seems a feasible method of recouping the loss. Nonetheless, the leases having terminated, there is no authority for reviving them. There is no indication that section 226(j) refers to terminated leases and we are not aware of any other authority for granting the relief desired.

We reach this conclusion despite the fact the lessees had filed non-federal Designation of Units, which did not include federally owned lands, in accordance with Oklahoma procedures and had attained production on both units, so that their leases would have been extended if the federal lands had been included within the unit. Even more striking we emphasize that fact that as to one lease, NM 0254311-B, the Oil and Gas Supervisor in a letter dated May 19, 1970, had directed the lessees to submit a draft of a unit agreement for approval. There was then less than two weeks left in the unused term. If the unit had been filed and approved, it would have extended the lease, for it would have included lands on which there was a producing well. However, as the major opinion concludes once a lease has terminated there is no authority to revive it by including it within a unit. See Kirkpatrick Oil and Gas Company et al., 8 IBLA 108 (1972).